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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. : **10/065,793** Confirmation No. **4753**
Applicant : **Jan Phillippe Eiras et al.**
Filed: : **11/19/2002**
TC/A.U. : **2157**
Examiner : **Hussein A. El Chanti**
Docket No. : **1416.01**
Customer No. : **21,901**
For : **Message Traffic Interception System**

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

BRIEF OF APPELANT

Sir/Madam:

In furtherance of its appeal from the Final Rejection mailed 22 February 2005,
Applicant hereby submits its Appeal brief.

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1. REAL PARTY IN INTEREST

Applicant is the real party in interest.

2. RELATED APPEALS AND INTERFERENCES

None

3. STATUS OF CLAIMS

Rejected claims: 1-31

Claims under appeal: 1-31

4. STATUS OF AMENDMENTS

Applicant's Amendment AF of April 19, 2005, submitted subsequent to the Examiner's Final Rejection was entered by the Office upon the filing of this Appeal, see the advisory action mailed May 11, 2005.

5. SUMMARY OF CLAIMED SUBJECT MATTER

Citations to the specification are by paragraph number. A concise explanation of the invention defined in the claims involved in this appeal is provided below. Claim 1 is the only independent claim on appeal.

Claim 1 recites a computer program product for program level message traffic interception (page 4, line 31 through page 5, line 1) comprising: a computer-readable medium, a protocol independent API core module stored on the medium (page 7, line 1; Fig. 1); the API core module having an array of predetermined rules for intercepted message traffic (page 7, lines 15-16; Fig. 4); and an interface communication emulator module communicatively coupling protocol-specific program level message traffic to the API core (page 6, lines 12-14; Fig. 2).

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- I. Whether the Office erred by issuing a premature Final Office action.¹
- II. Whether the Office erred in rejecting claims 1-31 under 35 U.S.C § 102(e) as being anticipated by Hite et al., (U.S. Patent No. 6,763,040).²

¹ Final Action, page 7

² Final Action, page 2

7. ARGUMENT

I. Premature Final Office action

The Office issued a Final Office action, rejecting claims 1-31, on February 22, 2005, in response to Amendment A filed by the Applicant on May 13, 2004.

Amendment A presented to the Office on May 13, 2004, included the following amendment to Claim 1:

Claim 1 (Currently Amended) A computer program product for program level message traffic interception comprising:
a computer-readable medium;
a protocol independent API core module stored on the medium, the API core module having an array of predetermined rules for intercepted message traffic; and
an interface communication emulator module communicatively coupling protocol-specific program level message traffic to the API core.

As such, the amendment to claim 1 filed on May 13, 2004, presented the addition of the term “program level” to the preamble and to the claim elements. The amendment was successful in overcoming the rejections presented in the First Office Action.

In the Final Office Action, the Office stated that the Applicant’s amendment as described above necessitated the new ground of rejection, and therefore the Action was made Final. However, it is apparent from the comments by the Office presented in this Final Office Action that the amendment was not considered and therefore could not have necessitated the new ground of rejection.

More specifically, the Office’s analysis of independent Claim 1 stated that Hite teaches, “an interface communication emulator module communicatively coupling protocol specific message traffic to the API core (see col. 1, lines 56-58, the received messages are provided with program specific protocol)”. From the reading of the analysis by the Office, it is clear that the Office did not address the amendment adding the term “program level” to this element of Claim 1. The Office completely ignored the amendment adding the term “program level” from the analysis of the claim. The Office did not address the amended language in the analysis of the elements of the claim, or in the preamble of the claim in view of the Hite reference.

For a determination to be made that the Applicant's amendment necessitated the new ground of rejection, the amendment must be such that the Office requires a new search of the prior art to be performed. In this specific case, if the Office felt that the addition of the term "program level" to the claim language made it necessary to perform a new search, it would seem reasonable that the term "program level" would be specifically addressed with regard to the new reference to establish the grounds for a Final Rejection. The Office has not identified anywhere in the Hite reference where the claim language, including the amendment, is described and as such, the Office did not properly establish grounds to make a Final Rejection on February 22, 2005.

For the reasons described above, Applicant believes that the Final Office Action mailed February 22, 2005, was premature. Accordingly, reversal of the final rejection is solicited

II. Anticipation by Hite et al., (U.S. Patent No. 6,763,040) under 35 U.S.C. § 102(e)

In the Final Office Action, mailed on February 22, 2005, the Office additionally rejected claims 1-31 under 35 U.S.C. § 102(e) as being anticipated by Hite et al., (U.S. Patent No. 6,763,040).

In the Final Office Action, regarding claim 1, the Office states that Hite teaches a computer program product for message traffic interception comprising, a computer readable medium, as shown by Hite at col. 6 lines 4-47, a protocol independent API core module store on the medium, the API core module having an array of predetermined rules for intercepted message traffic, as shown by Hite at col. 6, lines 48-67 and TABLE A, and an interface communication emulator module communicatively coupling protocol-specific message traffic to the API core, as shown by Hite at Col. 1, lines 55-58). The Applicant respectfully traverses the finding of the Office.

Independent claim 1 of the present invention includes a protocol independent API core module stored on a computer-readable medium, described at paragraph [0045] with reference to Fig. 1. The API described by Hite is not protocol independent. As described by Hite at col. 1 and col. 11, a communication protocol is provided comprising a packet protocol having a protocol field for indicating the type of protocol, a length of data field for listing the length in bytes of the data field, a data field containing sub protocol data, and a checksum for determining the integrity of the packet. As such, the API described by Hite et al. is not protocol

independent, but instead is dependent upon the specific protocol dictated by the internet appliance or the control area network selected. Additionally, the Office cites TABLE A of Hite as describing an array of predetermined rules for intercepted message traffic as claimed by the present invention. However, TABLE A is a list of exemplary messages that are valid between a device manager and a device master. These exemplary valid messages are not equivalent to the array of predetermined rules for intercepted message traffic as disclosed and claimed by the present invention. As such, Hite does not describe the API core module having an array of predetermined rules for intercepted message traffic as disclosed and claimed by the present invention.

Additionally, Claim 1 of the present invention includes an interface communication emulator module communicatively coupling the protocol-specific program level message traffic to the API core. As disclosed at paragraph [0041] and shown in Fig. 2, the interface communication emulator module is a component that handles the actual receipt and transmission of messages on a specific type of interface. Utilizing the interface communication emulator module, messages are received and reformatted into the standard scenario compliant structures. The Office cites col. 1, lines 55-58 of Hite as teaching an interface communication emulator module communicatively coupling the protocol-specific program level message traffic to the API core. However, Hite et al. describes at col. 1, lines 55-58 a dynamic protocol message generator to enable a scripting language capable of directly communicating on any TCP/IP network connection. Hite goes on to describe this dynamic protocol message generator at col. 51 wherein the primary goal of the dynamic protocol message generator is to make a scripting language such as VBScript or JavaScript capable of directly communicating on any TCP/IP network. As such, Hite does not describe an interface communication emulator module that handles the actual receipt and transmission of messages on a specific type of interface as disclosed and claimed by the present invention.

For the reasons cited above, Applicant believes that independent claim 1 is not anticipated by Hite et al. and that Applicant's patent rights have clearly been unfairly denied.

The Office's unfair refusal to consider this significant distinction between the claimed invention and the clear teachings and suggestions of the prior art has lead to an unfair denial of Applicant's patent rights.

8. CLAIMS APPENDIX

Serial No: 10/065,793
Filed: 19 November 2002
Title: Message Traffic Interception System

REJECTED CLAIMS

1. A computer program product for program level message traffic interception comprising:
a computer-readable medium;
a protocol independent API core module stored on the medium, the API core module having an array of predetermined rules for intercepted message traffic; and
an interface communication emulator module communicatively coupling protocol-specific program level message traffic to the API core.
2. The computer program product of claim 1 further comprising a message database communicatively coupled to the API core module, the message database further comprising an array of message properties for each message.
3. The computer program product of claim 2 wherein the array of message properties further comprise message interpretation data.
4. The computer program product of claim 2 wherein the array of message properties further comprise message formatting data.
5. The computer program product of claim 2 wherein the array of message properties further comprise message routing data.
6. The computer program product of claim 2 wherein the array of message properties further comprise message default values.
7. The computer program product of claim 2 wherein the array of message properties further comprise message transmission rules.
8. The computer program product of claim 2 wherein the array of message properties further comprise enable-lockout combination data.
9. The computer program product of claim 2 wherein the array of message properties further comprise limits on message field values.
10. The computer program product of claim 2 wherein the array of message properties further comprise message field units.

11. The computer program product of claim 2 wherein the array of message properties further comprise user-defined identifiers.
12. The computer program product of claim 2 wherein the array of message properties further comprise interface information.
13. The computer program product of claim 2 further comprising a scenario module communicatively coupled to the message database, the scenario module further comprising state machine emulation definition, the definition providing event-driven parameters responsive to message traffic.
14. The computer program product of claim 13 wherein the event-driven parameters discriminate between messages based on message identification.
15. The computer program product of claim 13 wherein the event-driven parameters discriminate between messages based on message contents.
16. The computer program product of claim 13 wherein the event-driven parameters discriminate between messages based on message occurrence.
17. The computer program product of claim 13 wherein the event-driven parameters discriminate between messages based on message frequency.
18. The computer program product of claim 13 wherein the event-driven parameters discriminate between messages based on a count of the number of times an event's parameters have been satisfied.
19. The computer program product of claim 13 wherein the event-driven parameters discriminate between messages based on a comparison with variables.
20. The computer program product of claim 13 wherein an event defined by the event-driven parameters modify the contents of a message.
21. The computer program product of claim 13 wherein an event defined by the event-driven parameters route a message.
22. The computer program product of claim 13 wherein an event defined by the event-driven parameters delete a message.
23. The computer program product of claim 13 wherein an event defined by the event-driven parameters controls other events.
24. The computer program product of claim 13 wherein an event defined by the event-driven parameters performs calculations.
25. The computer program product of claim 13 wherein an event defined by the event-driven parameters controls user displays.

26. The computer program product of claim 13 wherein an event defined by the event-driven parameters extracts at least one value from a message.
27. The computer program product of claim 13 wherein an event defined by the event-driven parameters creates and sends an arbitrary message defined in the database.
28. The computer program product of claim 13 wherein an event defined by the event-driven parameters transforms an incoming message into a different message defined in the database.
29. The computer program of claim 13 wherein the actions triggered by an event provide logical branching, looping, iteration, and internal or external subroutine calling capability.
30. The computer program product of claim 13 wherein the communications interface emulator module is communicatively coupled to the scenario execution module which is communicatively coupled to the message database whereby messages are received, reformatted into a message database compliant structure and outbound messages generated by the scenario module are passed back to the communications interface emulator module for protocol-specific transmissions
31. The computer program product of claim 13 further comprising a post-test data analysis capability wherein recorded data may be analyzed, abstracted, and displayed in a variety of text and graphical formats.

9. EVIDENCE APPENDIX

Exhibit A: Hite et al., *Internet Control System Communication Protocol and Method*, U.S. Patent No. 6,763,040, July 13, 2004.

10. RELATED PROCEEDINGS APPENDIX

None

CONCLUSION

Accordingly, reversal of the final rejection is solicited. No fair interpretation of the prior art can support the Office's position.

Very respectfully,

SMITH & HOPEN, P.A.



By: _____

USPTO Reg. No.46,457
Dated: August 17, 2007

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CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.10

I HEREBY CERTIFY that this Appeal Brief is being deposited with the United States Postal Service as "Express Mail Post Office to Addressee Mailing Label No. EV946520421US, addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450 on August 17, 2007



Lauren Reeves



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August 17, 2007

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicant: Jan Phillippe Eiras et al.
Serial No.: 10/065,793
Filing Date: 11/19/2002
For: Message Traffic Interception System
Our Reference: 1416.01

Examiner: Hussein A. El Chanti
Art Unit: 2157
Confirmation No.: 4753

Dear Sir:

Enclosed please find the following:

1. Amended Brief of Appellant having a Certificate of Mailing August 17, 2007 – (17 pages);
2. A copy of U.S. Patent No. 6,763,040;
3. A copy of Notification of Non-Complaint Appeal Brief – (2 pages); and
4. Self-addressed, postage prepaid post card to serve as a receipt for items 1-3.

Very respectfully,

SMITH & HOPEN

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MLS/lr
Enclosures

CERTIFICATE OF MAILING (37 C.F.R. 1.10)

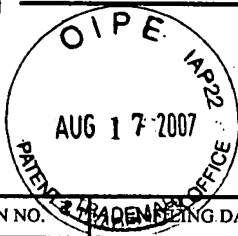
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Date: August 17, 2007

Lauren Reeves



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APPLICATION NO.	FILED DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/065,793

11/19/2002

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EXAMINER

EL CHANTI, HUSSEIN A

ART UNIT PAPER NUMBER

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

10/065,793

Examiner

Hussein A. El-Chant

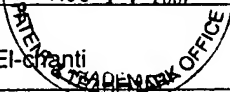
Applicant(s)

EIRAS ET AL.

Art Unit

2157

AUG 17 2007




--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 28 December 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☒ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☒ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☐ Other (including any explanation in support of the above items):

Section IX "related proceedings appendix and section X "Related Appeals and Interference" are missing".
Section V of the brief is defective because brief does not provide a concise explanation of the claimed subject matter referring to the specification by page and line number and to the drawings..


ARIO ETIENNE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100